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3                   UNITED STATES DISTRICT COURT  
4                   WESTERN DISTRICT OF WASHINGTON  
5                   AT TACOMA

6 JANET MARIE TILLERY,  
7    Plaintiff,  
8    v.  
9 CAROLYN W. COLVIN, Acting  
10    Commissioner of Social Security,  
11    Defendant.

Case No. 3:12-cv-05975-KLS

ORDER AFFIRMING DEFENDANT'S  
DECISION TO DENY BENEFITS

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13                   Plaintiff has brought this matter for judicial review of defendant's denial of her  
14 applications for disabled widow's and supplemental security income ("SSI") benefits. Pursuant  
15 to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties  
16 have consented to have this matter heard by the undersigned Magistrate Judge. After reviewing  
17 the parties' briefs and the remaining record, the Court hereby finds that for the reasons set forth  
18 below, defendant's decision to deny benefits should be affirmed.

20                   FACTUAL AND PROCEDURAL HISTORY

21                   On March 21, 2006, plaintiff filed an application for disabled widow's benefits, alleging  
22 she became disabled beginning January 1, 2001. See ECF #11, Administrative Record ("AR")  
23 16. That application was denied upon initial administrative review on September 6, 2006, and on  
24 reconsideration on November 7, 2006. See id. On July 16, 2008, plaintiff filed an application for  
25 SSI benefits, also alleging disability as of January 1, 2001, which was "escalated to the hearing"  
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1 level.” Id. A hearing was held before an administrative law judge (“ALJ”) on October 22, 2008,  
 2 at which plaintiff, represented by counsel, appeared and testified. See AR 461-84.

3 In a decision dated November 26, 2008, the ALJ determined plaintiff to be not disabled.  
 4 See AR 16-26. Plaintiff’s request for review of the ALJ’s decision was denied by the Appeals  
 5 Council on April 29, 2009, making the ALJ’s decision the final decision of the Commissioner of  
 6 Social Security (the “Commissioner”). See AR 5; see also 20 C.F.R. § 404.981, § 416.1481. That  
 7 decision was appealed to this Court, which on March 8, 2010, upon the stipulation of the parties,  
 8 reversed and remanded the matter for additional administrative proceedings, including re-  
 9 evaluation and further development of the medical evidence in the record. See AR 523-24, 527.  
 10 On April 24, 2010, pursuant to the Court’s order the Appeals Council vacated the ALJ’s decision  
 11 and remanded the matter for such additional proceedings. See AR 533, 535-36.

12 A second hearing was held before the same ALJ on September 27, 2010, at which  
 13 plaintiff, represented by counsel, appeared and testified. See AR 1100-1114. In a decision dated  
 14 December 8, 2010, the ALJ again determined plaintiff to be not disabled. See AR 506-22. It  
 15 does not appear from the record that the Appeals Council assumed jurisdiction of the case. See  
 16 20 C.F.R. § 404.984, § 416.1484. The ALJ’s decision therefore became the Commissioner’s  
 17 final decision after sixty days. Id. On November 9, 2012, plaintiff filed a complaint in this Court  
 18 seeking judicial review of the Commissioner’s final decision. See ECF #1. The administrative  
 19 record was filed with the Court on February 13, 2013. See ECF #11. A supplemental record was  
 20 filed with the Court on April 10, 2013. See ECF #17. The parties have completed their briefing,  
 21 and thus this matter is now ripe for the Court’s review.

22 Plaintiff argues the Commissioner’s final decision should be reversed and remanded for  
 23 an award of benefits, or in the alternative for further administrative proceedings, because the ALJ  
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1 erred: (1) in failing to properly determine plaintiff's severe medically determinable impairments;  
 2 (2) in failing to properly consider the impact of the side effects from her medications; (3) in  
 3 assessing her residual functional capacity; and (4) in ignoring or not following the instructions of  
 4 the Appeals Council on remand.<sup>1</sup> For the reasons set forth below, however, the Court disagrees  
 5 that the ALJ erred in determining plaintiff to be not disabled, and therefore finds that defendant's  
 6 decision should be affirmed.

#### DISCUSSION

9 The determination of the Commissioner that a claimant is not disabled must be upheld by  
 10 the Court, if the "proper legal standards" have been applied by the Commissioner, and the  
 11 "substantial evidence in the record as a whole supports" that determination. Hoffman v. Heckler,  
 12 785 F.2d 1423, 1425 (9th Cir. 1986); see also Batson v. Commissioner of Social Security  
 13 Admin., 359 F.3d 1190, 1193 (9th Cir. 2004); Carr v. Sullivan, 772 F.Supp. 522, 525 (E.D.  
 14 Wash. 1991) ("A decision supported by substantial evidence will, nevertheless, be set aside if the  
 15 proper legal standards were not applied in weighing the evidence and making the decision.")  
 16 (citing Brawner v. Secretary of Health and Human Services, 839 F.2d 432, 433 (9th Cir. 1987)).

18 Substantial evidence is "such relevant evidence as a reasonable mind might accept as  
 19 adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citation  
 20 omitted); see also Batson, 359 F.3d at 1193 ("[T]he Commissioner's findings are upheld if  
 21 supported by inferences reasonably drawn from the record."). "The substantial evidence test  
 22 requires that the reviewing court determine" whether the Commissioner's decision is "supported  
 23 by more than a scintilla of evidence, although less than a preponderance of the evidence is

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25 <sup>1</sup> Plaintiff also argues in his opening brief that the Commissioner further erred by failing to include new and material  
 26 evidence that was submitted to the Appeals Council. However, because that evidence has been provided to the  
 Court via submission of the supplemental record (see ECF #14-#17) and plaintiff has filed a supplemental opening  
 brief with respect thereto, that issue is now moot (see ECF #18).

1 required.” Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence  
 2 admits of more than one rational interpretation,” the Commissioner’s decision must be upheld.  
 3 Allen v. Heckler, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence  
 4 sufficient to support either outcome, we must affirm the decision actually made.”) (quoting  
 5 Rhinehart v. Finch, 438 F.2d 920, 921 (9th Cir. 1971)).<sup>2</sup>

6 I. Plaintiff’s Severe Medically Determinable Impairments

7 Defendant employs a five-step “sequential evaluation process” to determine whether a  
 8 claimant is disabled. See 20 C.F.R. § 404.1520, § 416.920. If the claimant is found disabled or  
 9 not disabled at any particular step thereof, the disability determination is made at that step, and  
 10 the sequential evaluation process ends. See id. At step two of the evaluation process, the ALJ  
 11 must determine if an impairment is “severe.” 20 C.F.R. § 404.1520, § 416.920. An impairment  
 12 is “not severe” if it does not “significantly limit” a claimant’s mental or physical abilities to do  
 13 basic work activities. 20 C.F.R. § 404.1520(a)(4)(iii), (c), § 416.920(a)(4)(iii), (c); see also  
 14 Social Security Ruling (“SSR”) 96-3p, 1996 WL 374181 \*1. Basic work activities are those  
 15 “abilities and aptitudes necessary to do most jobs.” 20 C.F.R. § 404.1521(b), § 416.921(b); SSR  
 16 85- 28, 1985 WL 56856 \*3.

17 An impairment is not severe only if the evidence establishes a slight abnormality that has  
 18 “no more than a minimal effect on an individual[’]s ability to work.” SSR 85-28, 1985 WL  
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 22<sup>2</sup> As the Ninth Circuit has further explained:

23       . . . It is immaterial that the evidence in a case would permit a different conclusion than that  
 24 which the [Commissioner] reached. If the [Commissioner]’s findings are supported by  
 25 substantial evidence, the courts are required to accept them. It is the function of the  
 26 [Commissioner], and not the court’s to resolve conflicts in the evidence. While the court may  
 not try the case de novo, neither may it abdicate its traditional function of review. It must  
 scrutinize the record as a whole to determine whether the [Commissioner]’s conclusions are  
 rational. If they are . . . they must be upheld.

Sorenson, 514 F.2dat 1119 n.10.

1 56856 \*3; see also Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir. 1996); Yuckert v. Bowen, 841  
 2 F.2d 303, 306 (9th Cir.1988). Plaintiff has the burden of proving that her “impairments or their  
 3 symptoms affect her ability to perform basic work activities.” Edlund v. Massanari, 253 F.3d  
 4 1152, 1159-60 (9th Cir. 2001); Tidwell v. Apfel, 161 F.3d 599, 601 (9th Cir. 1998). The step  
 5 two inquiry described above, however, is a *de minimis* screening device used to dispose of  
 6 groundless claims. See Smolen, 80 F.3d at 1290.

7  
 8 The ALJ in this case found plaintiff had severe impairments consisting of chronic  
 9 obstructive pulmonary disease, degenerative disc disease and acid reflux. See AR 510. Plaintiff  
 10 argues the ALJ erred in not also finding her major depressive, panic, social anxiety, generalized  
 11 anxiety, and posttraumatic stress disorders, as well as her headaches and incontinence, to be  
 12 severe impairments. The Court disagrees. In regard to plaintiff’s mental health impairments,  
 13 headaches and incontinence, the ALJ found in relevant part as follows:

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 15 The claimant . . . alleges that headaches [and] incontinence . . . cause her to be  
 16 disabled. However, the medical record shows that these impairments do not  
 17 limit the claimant’s ability to perform work activities. The medical evidence  
 18 does not show that headaches are frequent enough to prevent the claimant  
 19 from working. The claimant testified that she controls her incontinence by  
 20 wearing adult diapers. . . .  
 21  
 22 . . .  
 23  
 24 The claimant’s medically determinable mental impairments of depression and  
 25 anxiety do not cause more than minimal limitation in the claimant’s ability to  
 26 perform basic mental work activities and are therefore nonsevere. The  
 27 claimant received treatment for this condition in 2009, but her treatment  
 28 provider opined that her Global Assessment of Functioning (GAF) score is 65,  
 29 indicating only mild symptoms (Ex. 17F, p. 9). In September 2009 Disability  
 30 Determination Services (DDS) examiner Thomas Clifford, Ph.D., concluded  
 31 that the record did not support the finding of a severe mental impairment (Ex.  
 32 16F). Records created since that time do not establish the presence of a severe  
 33 mental impairment; therefore I find that the claimant’s mental health disorders  
 34 are not severe.

35 AR 510-11 (internal footnotes omitted).

36 ORDER - 5

1           First, with respect to headaches, plaintiff asserts her own testimony – that they can last  
 2 for up to 48 hours at a time, that when she gets them she cannot do much besides just lay in bed  
 3 and cannot maintain sufficient focus and concentration to do work-like activities (see AR 1108)  
 4 – supports a finding of severity. But while the ALJ must take into account a claimant's reported  
 5 pain and other symptoms at step two of the sequential disability evaluation process (see 20  
 6 C.F.R. § 404.1529, § 416.929), the severity determination is made solely on the basis of the  
 7 objective medical evidence in the record (see SSR 85-28, 1985 WL 56856 \*4 (at second step of  
 8 sequential evaluation process, “medical evidence alone is evaluated in order to assess the effects  
 9 of the impairment(s) on ability to do basic work activities”)).

11           As noted by the ALJ, the objective medical evidence in the record contains little, if any,  
 12 indication that plaintiff was actually limited by her headaches in terms of her ability to perform  
 13 basic work activities. Indeed, plaintiff has not pointed to any. In addition, although plaintiff has  
 14 challenged the ALJ's treatment of her reported medication side effects, including headaches, she  
 15 has not asserted error in regard to any of the ALJ's other stated reasons for finding her less than  
 16 fully credible concerning her subjective complaints and allegations of disability.<sup>3</sup> See AR 515-  
 17 17. To the extent plaintiff's testimony differs from the ALJ's assessment of her ability to  
 18 function, therefore, he did not err in failing to adopt it.

20           As for her incontinence, the Court agrees the ALJ mischaracterized plaintiff's testimony  
 21 in stating she testified that she “controls” that condition by wearing adult diapers. Although she  
 22 testified that she did not have accidents “so much lately” because of them, plaintiff also testified  
 23 that she had to go to the bathroom “about every 45 minutes.” AR 1112. Thus, while she may no

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25           <sup>3</sup> See Carmickle v. Commissioner of Social Sec. Admin., 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (issue not argued  
 26 with specificity in briefing will not be addressed); Paladin Associates., Inc. v. Montana Power Co., 328 F.3d 1145,  
 1164 (9th Cir. 2003) (by failing to make argument in opening brief, objection to district court's grant of summary  
 judgment was waived); Kim v. Kang, 154 F.3d 996, 1000 (9th Cir.1998) (matters on appeal not specifically and  
 distinctly argued in opening brief ordinarily will not be considered).

1 longer experience accidents with the frequency that she once did, according to plaintiff she still  
 2 was regularly impacted by her incontinence, at least in terms of needing to go to the bathroom.  
 3 That being said, plaintiff has failed to demonstrate any error with respect to the ALJ's statement  
 4 that there is no objective medical support in the record to show that this condition has an adverse  
 5 impact on her ability to perform work activities. For that reason, the Court finds the ALJ's error  
 6 in mischaracterizing plaintiff's testimony to be harmless.<sup>4</sup>  
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8       Lastly in terms of the allegedly severe mental health impairments, once more plaintiff  
 9 primarily relies on her own testimony and self-reports concerning the symptoms and limitations  
 10 arising therefrom. But also once more, given the ALJ's unchallenged reasons for determining  
 11 plaintiff to be not entirely credible regarding her subjective complaints, the ALJ was not required  
 12 to give any weight to that testimony or those self-reports. Plaintiff points to the statement of her  
 13 treating physician, Richard T. Dehlinger, M.D., in late October 2004, that due to “[h]er anxiety  
 14 flares during episodes of psychosocial stress including formal testing,” he would “recommend  
 15 that she be given longer times to complete academic tests.” AR 157. The undersigned agrees the  
 16 ALJ erred in failing to address that statement in his decision, but again finds that error to be  
 17 harmless in light of the fact that, as noted by the ALJ, the substantial weight of the subsequent  
 18 medical evidence of record fails to support more than minimal limitations on her ability to work.<sup>5</sup>  
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21       <sup>4</sup> See Stout v. Commissioner, Social Security Admin., 454 F.3d 1050, 1055 (9th Cir. 2006) (error harmless where it  
 22 is non-prejudicial to claimant or irrelevant to ALJ's ultimate disability conclusion); see also Parra v. Astrue, 481  
 23 F.3d 742, 747 (9th Cir. 2007) (finding any error on part of ALJ would not have affected “ALJ's ultimate decision.”).

24       <sup>5</sup> Indeed, examining psychiatrist Paul Choi, M.D., specifically noted in late August 2006, that plaintiff “did not  
 25 endorse psychiatric symptoms as the reason why she is unable to work.” AR 261. Although plaintiff points out that  
 26 Dr. Choi diagnosed her with both a major depressive disorder and a social anxiety disorder, Dr. Choi also found the  
 major depressive disorder to be only mild in severity and the social anxiety disorder to be solely “by history,” and  
 expressly opined that “[f]rom a psychiatric perspective,” there was “no reason she would not be able to perform  
 work on a consistent basis,” and she appeared “to be managing and functioning decently.” AR 265-66. Further, the  
 mere fact that plaintiff has been diagnosed with a mental health disorder by Dr. Choi – or any other mental health  
 professional such as Felicia Hanig, ARNP, to whom plaintiff also points as supporting a finding of severity here, for  
 that matter (see AR 789) – is an insufficient basis upon which to establish disability. See Matthews v. Shalala, 10  
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1 See AR 265-66, 277-79, 762, 764, 792, 798.

2 Plaintiff also points to the late January opinion of treating therapist Stephanie Dann that  
 3 while she has “[s]evere difficulty in financial and social areas of functioning” and “is unable to  
 4 be employed at this time,” she could “function in a school environment.” AR 763. With respect  
 5 to that opinion the ALJ stated:

6 I give some weight to the opinion of Stephanie Dann, who concluded that the  
 7 claimant’s mental health impairments would cause only mild limitation in  
 8 preventing her from working (Ex. 17F, p. 8). This opinion is inconsistent with  
 9 the medical record and consistent with Ms. Dann’s finding that the claimant  
 10 has a GAF [score] of 65 (Ex. 17F, p. 9). Her inconsistent comment on the  
 11 previous page that “(c)laimant is unable to be employed at this time but can  
 12 function in a school environment,” is unexplained and accorded zero weight,  
 13 as is the comment concerning severe difficulty in social functioning. These  
 14 comments may represent claimant [sic] report. As discussed above, the  
 15 evidence shows that the claimant’s mental impairments are non-severe, and do  
 16 not prevent her from performing work duties. I accord more weight to the  
 17 better supported longitudinal assessment of Dr. Thomas Clifford at Exhibit  
 18 16F.

19 AR 519 (internal footnote omitted). Plaintiff does not challenge the ALJ’s statement that Ms.  
 20 Dann’s opinion is inconsistent with the mild limitations she found plaintiff had in work, school  
 21 or other daily activities and the GAF score of 65 she assessed at the same time.<sup>6</sup> See AR 763-65.  
 22 Discrepancies between an opinion source’s functional assessment and his or her clinical notes or  
 23 other comments, “is a clear and convincing reason for not relying” on the assessment. Bayliss v.  
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25 F.3d 678, 680 (9th Cir. 1993); see also Higgs v. Bowen, 880 F.2d 860, 863 (6th Cir. 1988) (noting that “[t]he mere  
 26 diagnosis of [an impairment] . . . says nothing about the severity of the [diagnosed] condition,” and upholding  
 finding of non-severity where doctors reports were silent as to any limitations that may stem from that impairment).  
 So too is the mere fact that psychiatric medications have been prescribed. That is, the existence of a prescription for  
 medication does not by itself indicate the presence of significant work related limitations. In addition, the fact that  
 plaintiff was able to attend the second hearing apparently after having taken medication due to a panic attack she had  
 just prior to the hearing (see AR 1104), indicates her medication is effective in enabling her to function adequately,  
 thereby supporting a finding of non-severity here.

<sup>6</sup> As noted by the ALJ, a GAF score of 65 “reflects mild symptoms or “some difficulty[in social, occupational, or  
 school functioning], but the individual ‘generally function[s] pretty well.’” Sims v. Barnhart, 309 F.3d 424, 427 n.5  
 (7th Cir. 2002) (quoting American Psychiatric Association, Diagnostic & Statistical Manual of Mental Disorders 30  
 (4th ed. 1994) (referring to GAF score of 61-70)).

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1 Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005); see also Weetman v. Sullivan, 877 F.2d 20, 23  
 2 (9th Cir. 1989).

3 The ALJ also was not remiss in rejecting Ms. Dann's opinion on the basis that she failed  
 4 to explain why she believed plaintiff was not able to work, but could function at school. See id.  
 5 Plaintiff points to findings Ms. Dann noted regarding both observed and self-reported symptoms.  
 6 But to the extent Ms. Dann relied on plaintiff's self-reported symptoms the ALJ did not err in  
 7 rejecting her opinion in part on this basis, given as discussed above the ALJ's adverse credibility  
 8 determination, which plaintiff largely leaves unchallenged. Further, to the extent Ms. Dann also  
 9 relied on symptoms she observed during her evaluation of plaintiff – which appears questionable  
 10 given the fairly unremarkable mental status examination results obtained (see AR 762) – that still  
 11 does not explain the inconsistency between Ms. Dann's opinion that plaintiff was unable to work  
 12 and her opinion that she could function at school.<sup>7</sup>

14 II. Side Effects from Plaintiff's Medications

15 Questions of credibility are solely within the control of the ALJ. See Sample v.  
 16 Schweiker, 694 F.2d 639, 642 (9th Cir. 1982). The Court should not “second-guess” this  
 17 credibility determination. Allen, 749 F.2d at 580. In addition, the Court may not reverse a  
 18 credibility determination where that determination is based on contradictory or ambiguous  
 19 evidence. See id. at 579. That some of the reasons for discrediting a claimant's testimony should  
 20 properly be discounted does not render the ALJ's determination invalid, as long as that  
 21 determination is supported by substantial evidence. Tonapetyan v. Halter, 242 F.3d 1144, 1148

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24 <sup>7</sup> Also not acknowledged by plaintiff, the ALJ gave greater weight to the opinion of non-examining psychologist  
 25 Thomas Clifford, Ph.D., which was permissible here as well given that Ms. Dann is not an “acceptable medical  
 26 source.” See Gomez v. Chater, 74 F.3d 967, 970-71 (9th Cir. 1996) (ALJ may give less weight to opinions of those  
 who are not acceptable medical sources); 20 C.F.R. § 404.1513(a), (d), § 416.913(a), (d) (licensed physicians and  
 licensed or certified psychologists are “acceptable medical sources”). While plaintiff does assert in general that the  
 ALJ erred in regard to the weight he gave Dr. Clifford's opinion, she fails to argue with any specificity exactly how  
 the ALJ did so. See ECF #13, p. 15. Accordingly, the Court finds that assertion to be without merit.

1 (9th Cir. 2001).

2 To reject a claimant's subjective complaints, the ALJ must provide "specific, cogent  
 3 reasons for the disbelief." Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1996) (citation omitted).  
 4 The ALJ "must identify what testimony is not credible and what evidence undermines the  
 5 claimant's complaints." Id.; see also Dodrill v. Shalala, 12 F.3d 915, 918 (9th Cir. 1993). Unless  
 6 affirmative evidence shows the claimant is malingering, the ALJ's reasons for rejecting the  
 7 claimant's testimony must be "clear and convincing." Lester, 81 F.2d at 834. The evidence as a  
 8 whole must support a finding of malingering. See O'Donnell v. Barnhart, 318 F.3d 811, 818 (8th  
 9 Cir. 2003).

10 In determining a claimant's credibility, the ALJ may consider "ordinary techniques of  
 11 credibility evaluation," such as reputation for lying, prior inconsistent statements concerning  
 12 symptoms, and other testimony that "appears less than candid." Smolen, 80 F.3d at 1284. The  
 13 ALJ also may consider a claimant's work record and observations of physicians and other third  
 14 parties regarding the nature, onset, duration, and frequency of symptoms. See id.

15 As noted above, the ALJ in this case provided a number of reasons for finding plaintiff to  
 16 be less than fully credible concerning her subjective complaints and allegations of disability. See  
 17 AR 515-17. Also as noted above, plaintiff does not specifically challenge any of those reasons,  
 18 but instead argues the ALJ erred in failing to properly consider the impact of the side effects she  
 19 experienced from her medications. In regard to medication side effects, the ALJ stated he had  
 20 "considered [plaintiff's] allegations of side effects in coming to [his] conclusions regarding her  
 21 residual functional capacity, which account[ed] for all limitations [he found] credible on the  
 22 record as a whole." AR 515 n.8.

23 While the Court agrees this statement by the ALJ by itself is not sufficient to constitute a

1 clear and convincing reason for finding her not fully credible concerning her testimony and self-  
 2 reports of medication side effects given its lack of specificity, again plaintiff has not challenged  
 3 any of the other reasons the ALJ gave for discounting her credibility regarding her subjective  
 4 complaints and allegations of disability. Thus, this case is unlike that presented in Varney v.  
 5 Secretary of Health and Human Services, 846 F.2d 581 (9th Cir. 1988), wherein the ALJ failed  
 6 to make any findings regarding the claimant's allegations of medication side effects or to give  
 7 any specific reasons for determining she lack credibility with respect thereto. See id. at 585-86.  
 8 Plaintiff's reliance on that case, therefore, is unavailing.<sup>8</sup>

10 IV. The ALJ's Assessment of Plaintiff's Residual Functional Capacity

11 If a disability determination "cannot be made on the basis of medical factors alone at step  
 12 three of the evaluation process," the ALJ must identify the claimant's "functional limitations and  
 13 restrictions" and assess his or her "remaining capacities for work-related activities." SSR 96-8p,  
 14 1996 WL 374184 \*2. A claimant's residual functional capacity ("RFC") assessment is used at  
 15 step four to determine whether he or she can do his or her past relevant work, and at step five to  
 16 determine whether he or she can do other work. See id. It thus is what the claimant "can still do  
 17 despite his or her limitations." Id.

19 A claimant's residual functional capacity is the maximum amount of work the claimant is  
 20 able to perform based on all of the relevant evidence in the record. See id. However, an inability  
 21 to work must result from the claimant's "physical or mental impairment(s)." Id. Thus, the ALJ  
 22 must consider only those limitations and restrictions "attributable to medically determinable  
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25 <sup>8</sup> Plaintiff also asserts "[h]er treating providers have further noted and cautioned [her] about the side effects she  
 26 experiences." ECF #13, p. 13. However, she fails to point to any specific portion of the record in which such side  
 effects are noted by her providers based on their actual observations of her, as opposed to her own self-reporting  
 thereof. In addition, the mere fact that certain medications can cause side effects does not necessarily mean that they  
 actually do so.

1 impairments.” *Id.* In assessing a claimant’s RFC, the ALJ also is required to discuss why the  
 2 claimant’s “symptom-related functional limitations and restrictions can or cannot reasonably be  
 3 accepted as consistent with the medical or other evidence.” *Id.* at \*7.

4       The ALJ in this case found plaintiff had the residual functional capacity to perform light  
 5 work, along with the ability to occasionally climb ramps, stairs, ladders, ropes, or scaffolds, and  
 6 the need to avoid concentrated exposure to pulmonary irritants. See AR 513. Plaintiff argues the  
 7 ALJ erred by not including in his RFC assessment all of the functional limitations related to her  
 8 headaches, incontinence and mental health impairments. But as discussed above, the ALJ did  
 9 not err in finding that those impairments had no more than a minimal impact on plaintiff’s ability  
 10 to perform basic work activities, and therefore that they were non-severe. Plaintiff has failed to  
 11 show the objective medical evidence in the record supports inclusion of greater limitations due to  
 12 those impairments than found by the ALJ. In addition, in light of plaintiff’s failure to challenge  
 13 the reasons the ALJ gave for discounting her credibility, the Court also finds the ALJ did not err  
 14 in declining to include any additional limitations based on her testimony.

17 V.     The Appeals Council’s Instructions on Remand

18       Plaintiff argues that despite being directed by the Appeals Council to re-evaluate the  
 19 medical evidence in the record on remand, the ALJ failed to do so with regard to the opinion  
 20 evidence from examining physician Elizabeth Arias, M.D. The Court disagrees. Although the  
 21 ALJ did not directly address the opinion of Dr. Arias in his most recent decision, he did state at  
 22 the beginning thereof that “[e]xcept to the extent inconsistent with the findings and conclusions  
 23 of this decision, I adopt the discussion, findings, and conclusions of my prior decision *as if fully*  
 24 *set forth herein.*” AR 507 (emphasis added). That prior decision contains the ALJ’s discussion  
 25 of Dr. Arias’s opinion and sets forth the ALJ’s reasons for declining to adopt those limitations

1 Dr. Arias assessed that are more restrictive than the ALJ found. See AR 25. It thus is reasonable  
2 to assume that the ALJ once more was rejecting those limitations for the same reasons he did in  
3 his prior decision.<sup>9</sup> Since plaintiff has not challenged those reasons, the Court declines to find  
4 any error on the part of the ALJ here.

5 CONCLUSION

6 Based on the foregoing discussion, the Court hereby finds the ALJ properly concluded  
7 plaintiff was not disabled. Accordingly, defendant's decision to deny benefits is AFFIRMED.

8  
9 DATED this 5th day of December, 2013.

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13 Karen L. Strombom  
14 United States Magistrate Judge  
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<sup>9</sup> See Magallanes v. Bowen, 881 F.2d 747, 755, (9th Cir. 1989) (court may draw "specific and legitimate inferences from the ALJ's opinion").